

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to English learners**

The State Board of Education hereby amends Chapter 19, “Charter Schools,” Chapter 23, “Adult Education and Literacy Programs,” Chapter 41, “Special Education,” Chapter 60, “Programs for Students of Limited English Proficiency,” Chapter 67, “Educational Support Programs for Parents of At-Risk Children Aged Birth Through Five Years,” Chapter 68, “Iowa Public Charter and Innovation Zone Schools,” Chapter 77, “Standards for Teacher Intern Preparation Programs,” Chapter 79, “Standards for Practitioner and Administrator Preparation Programs,” Chapter 98, “Financial Management of Categorical Funding,” and Chapter 120, “Early Access Integrated System of Early Intervention Services,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2022 Iowa Acts, Senate File 2128.

*Purpose and Summary*

This rule making eliminates outdated references to students as “limited English proficient” in favor of the more current term “English learner.” This rule making, for consistency and simplicity, also replaces “English language learner” with “English learner.”

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 5, 2022, as **ARC 6584C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Board on November 16, 2022.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on January 18, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **19.7(1)“I”** as follows:

*l.* Plans for identifying and serving students with disabilities, students who are ~~limited English proficient~~ English learners, students who are academically failing or below grade level, and gifted students, including but not limited to compliance with applicable laws and regulations.

ITEM 2. Amend paragraph **19.8(1)“I”** as follows:

*l.* Plans for identifying and serving students with disabilities, students who are ~~limited English proficient~~ English learners, students who are academically failing or below grade level, and gifted students, including but not limited to compliance with applicable laws and regulations.

ITEM 3. Amend paragraph **19.10(1)“c”** as follows:

*c.* Achievement gaps in both proficiency and growth on statewide outcome assessments between specified populations or groups of students, including groups based on gender, race, poverty, special education status, ~~limited English proficiency~~ English learner status, and gifted status.

ITEM 4. Amend subparagraph **23.3(2)“a”(2)** as follows:

(2) Programs for adults of ~~limited English proficiency~~ who are English learners;

ITEM 5. Amend rule 281—41.27(256B,34CFR300) as follows:

**281—41.27(256B,34CFR300) Limited English proficient.** “Limited English proficient” has the meaning given the term “English learner” in Section 8101 of the ESEA.

ITEM 6. Amend **281—Chapter 60**, title, as follows:

**PROGRAMS FOR STUDENTS OF ~~LIMITED ENGLISH PROFICIENCY~~ WHO ARE ENGLISH LEARNERS**

ITEM 7. Amend rule 281—60.1(280) as follows:

**281—60.1(280) Scope.** These rules apply to the identification of students and provision of programs for ~~limited English proficient~~ students who are English learners and to the application procedures for securing fiscal support.

ITEM 8. Adopt the following new definition of “English learner” in rule **281—60.2(280)**:

“*English learner*” means a student whose language background is in a language other than English, and the student’s proficiency in English is such that the probability of the student’s academic success in an English-only classroom is below that of an academically successful peer with an English language background. Each English learner shall be identified as either an intensive student or an intermediate student.

ITEM 9. Rescind the definition of “Limited English proficient” in rule **281—60.2(280)**.

ITEM 10. Amend rule **281—60.2(280)**, definitions of “Intensive student” and “Intermediate student,” as follows:

“*Intensive student*” means ~~a limited English proficient student~~ an English learner who, even with support, is not proficient under the state’s English language proficiency standards, as measured by the state-adopted assessment of English language proficiency.

“*Intermediate student*” means ~~a limited English proficient student~~ an English learner who, either with or without support, approaches being proficient under the state’s English language proficiency standards, as measured by the state-adopted assessment of English language proficiency.

ITEM 11. Amend subrule 60.3(3) as follows:

**60.3(3) *Limited English proficient student learner placement.*** Placement of students identified as ~~limited English proficient~~ learners shall be in accordance with the following:

a. No change.

b. ~~Limited English proficient~~ learner program placement.

(1) Students enrolled in a program for ~~limited English proficient students~~ learners shall receive language instruction with other ~~limited English proficient students~~ learners with similar language needs.

(2) to (5) No change.

ITEM 12. Amend subrule 60.3(4) as follows:

**60.3(4) *Medium of instruction.*** Instruction in all secular subjects taught in both public and nonpublic schools shall be in the English language, except when the use of a world language is deemed appropriate because the student is ~~limited English proficient~~ an English learner. When the student is ~~limited English proficient~~ an English learner, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language.

ITEM 13. Amend subrule 60.3(5) as follows:

**60.3(5) *Research-based educational and instructional models.*** Districts shall utilize research-based educational and instructional models as defined in rule 281—60.2(280) with ~~limited English proficient students~~ English learners so that such students may acquire English proficiency and meet high academic standards.

ITEM 14. Amend rule 281—60.4(280) as follows:

**281—60.4(280) Department responsibility.** The department of education shall provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for ~~limited English proficient students~~ English learners.

**60.4(1) to 60.4(3)** Rescinded IAB 2/2/94, effective 3/9/94.

ITEM 15. Amend subrule 60.6(1) as follows:

**60.6(1) *Weighting.*** A weighting is included in the weighted enrollment of the school district of residence for a period not exceeding five years to provide funds for the excess costs of instruction of ~~limited English proficient students~~ English learners above the costs of instruction of pupils in a regular curriculum.

a. A student may be included for weighting if the student meets the definition of a ~~limited English proficient student~~ as either an intensive student or an intermediate student and the student is being provided instruction related to limited English proficiency pursuant to this chapter that is above the level of instruction provided to pupils in the regular curriculum.

b. and c. No change.

ITEM 16. Amend subrule 60.6(2) as follows:

**60.6(2) *Supplemental aid or modified supplemental amount.*** In addition to weighting, the school budget review committee (SBRC) may grant supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting or for costs in excess of the weighting to provide instruction to ~~limited English proficient students~~ English learners above the costs of regular instruction.

a. A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the amount generated from weighting for students identified as ~~limited English proficient~~ English learners who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual ~~limited English proficient~~ English learner program (more commonly referred to as “English language learner program”) expenditures for the previous year, reduced by the ~~limited English proficient~~ English learner funding

generated in the previous budget year based on the ~~limited English proficient~~ English learner count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

b. A district of residence may apply to the SBRC for supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting no later than December 1 following the date specified in Iowa Code section 257.6(1) for the certified enrollment. The supplemental aid or modified supplemental amount will be calculated by multiplying the number of resident students identified as ~~limited English proficient~~ English learners who are provided instruction beyond the regular instruction, and who are being served beyond the five years of weighting on the certified enrollment, by the weighting provided under subrule 60.6(1), multiplied by the district cost per pupil in the current year.

c. No change.

The SBRC may require the district to appear at a hearing to discuss its request for supplemental aid or a modified supplemental amount.

ITEM 17. Amend subrule 60.6(3) as follows:

**60.6(3) *Appropriate expenditures.*** Appropriate expenditures for the ~~limited English proficiency~~ English learner program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures are delineated in 281—Chapter 98.

ITEM 18. Amend subrule 60.6(5) as follows:

**60.6(5) *Financial management.*** ~~Limited English proficient~~ English learner funding is categorical funding and follows the general provisions in 281—Chapter 98.

ITEM 19. Amend subrule 60.6(6) as follows:

**60.6(6) *Annual reporting.*** Districts shall include and identify the detail of financial transactions related to ~~limited English proficient~~ English learner resources, expenditures, and ~~carryforward~~ carryforward balances on their certified annual report. School districts shall use the account coding appropriate to the ~~limited English proficient~~ English learner program as defined by Uniform Financing Accounting for Iowa School Districts and AEAs. Each district shall submit its certified annual report following the close of the fiscal year but no later than September 15.

ITEM 20. Amend rule 281—67.5(279) as follows:

**281—67.5(279) *Secondary eligibility.*** The available funds shall be directed to serve parents of at-risk children aged birth through five years when children qualify in one or more of the secondary eligibility categories as follows:

1. to 4. No change.
5. Children residing in a household where one or more of the parents or guardian:
  - Has not completed high school;
  - Has been identified as a substance abuser;
  - Has been identified as chronically mentally ill;
  - Is incarcerated;
  - Is illiterate;
  - Is a child abuser or spouse abuser; or
  - ~~Has limited English proficiency~~ Is an English learner.
6. No change.

ITEM 21. Amend subparagraph **68.4(2)“d”(2)** as follows:

(2) The educational program and curriculum utilizing different and innovative instructional methodologies that reflect sensitivity to gender, racial, ethnic and socioeconomic backgrounds. Services to be offered to all prospective students, including students with disabilities pursuant to the requirements of 281—Chapter 41, ~~English Language Learners (ELL)~~ learners, and other students considered “at risk,” must also reflect the same sensitivities.

ITEM 22. Amend rule 281—68.11(256F,83GA,SF2033) as follows:

**281—68.11(256F,83GA,SF2033) Application process.** An innovation zone consortium shall submit an application to establish an innovation zone school to the state board no later than December 15 immediately preceding the school year for which the innovation zone school desires to start operations. The application shall demonstrate the support, as of approximately the date of submission of the application, of at least 50 percent of the teachers employed at the proposed innovation zone school and at least 50 percent of the affected family units. The application shall set forth the manner in which the innovation zone school will comply with federal and state laws regarding instruction to students who are English language learners and regarding the National School Lunch Act and Child Nutrition Act.

ITEM 23. Amend paragraph 77.10(7)“d” as follows:

d. English language learners; and

ITEM 24. Amend paragraph 79.15(2)“e” as follows:

e. English language learners.

ITEM 25. Amend subrule 79.15(3) as follows:

**79.15(3)** Each teacher candidate demonstrates competency in literacy, to include reading theory, knowledge, strategies, and approaches; and integrating literacy instruction into content areas. The teacher candidate demonstrates competency in making appropriate accommodations for students who struggle with literacy. Demonstrated competency shall address the needs of all students, including but not limited to, students with disabilities; students who are at risk of academic failure; students who have been identified as gifted and talented or ~~limited English proficient~~ English learners; and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B. Literacy instruction shall include evidence-based best practices, determined by research, including that identified by the Iowa reading research center.

ITEM 26. Amend paragraph 79.17(6)“e” as follows:

e. English language learners.

ITEM 27. Amend paragraph 79.21(2)“e” as follows:

e. English language learners.

ITEM 28. Amend rule 281—98.16(257,280) as follows:

**281—98.16(257,280) Limited English proficiency (LEP) English learner weighting.** ~~Limited English proficiency~~ English learner weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of ~~limited English proficiency students~~ English learners above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the ~~limited English proficiency~~ English learner weighting and the modified supplemental amount for ~~limited English proficiency~~ English learner programs are both categorical funding and may have different restrictions than the federal ~~limited English proficiency~~ English learner funding.

**98.16(1) Appropriate uses of categorical funding.** Appropriate uses of funding for the ~~limited English proficiency~~ English learner program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in ~~limited English proficiency~~ English learner programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of ~~limited English proficiency students~~ English learners and community services specific to ~~limited English proficiency~~ English learners.

**98.16(2) Inappropriate uses of categorical funding.** Inappropriate uses of funding for the ~~limited English proficiency~~ English learner program include, but are not limited to, indirect costs, operational

or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the ~~limited English proficiency~~ English learner program beyond the scope of the regular classroom.

ITEM 29. Amend subrule 120.25(1), introductory paragraph, as follows:

**120.25(1)** *Limited English proficiency*. “Native language,” when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act and in rule 281—41.27(256B,34CFR300)), means:

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